**COMMISSION FOR MENTAL HEALTH,
DEVELOPMENTAL DISABILITIES AND
SUBSTANCE ABUSE SERVICES**

Commission Minutes

**Clarion Hotel
320 Hillsborough Street
Raleigh, NC 27603**

Thursday, February 19, 2009

Attending:
John R. Corne, Dr. Diana J. Antonacci, Jennifer Brobst, Dorothy Rose Crawford, Judith Ann Dempsey, Mazie T. Fleetwood, Dr. Thomas Gettelman, Dr. Ranota Thomas Hall, Elizabeth MacMichael, Phillip A. Mooring, Connie Mele, Dr. Greg Olley, John Owen, Pamela Poteat, Jerry Ratley, Dr. Marvin Swartz, Don Trobaugh, Martha Martinat, Dr. William Sims

Excused Members: Larry Pittman, Norman Carter, Sandra DuPuy, Thomas Fleetwood, Dr. Richard Brunstetter, Dorothy O'Neal

Division Staff:
Leza Wainwright, Steven Hairston, W. Denise Baker, Marta T. Hester, Amanda J. Reeder, Andrea Borden, Tonya Goode, Sandee Resnick, Jim Osberg, Bill Bronson, Michelle Edelen, Jim Jarrard, Flo Stein, Tracy Ginn, Stuart Berde, Cheryl Riggins, Debbie Barbour

Others:
E. McLaughlin, Ann Rodriguez, Michael Bishop, Annaliese Dolph, Louise Fisher, Diane Pomper, Deby Dihoff, Peggy Balak, Anna Sims, John Crawford

Handouts:
1. Comment Grid for Rules Submitted at February 19, 2009 Meeting
2. NC General Statute § 122C-3
3. Draft Joint Legislative Oversight Committee on MH/DD/SAS Report to the 2009 Regular Session of the 2009 General Assembly

Mailed Packet:
1. February 19, 2009 Agenda
2. Draft November 20, 2008 Commission Minutes
3. Draft October 15, 2008 Rules Committee Minutes
4. Draft October 16, 2008 Advisory Committee Minutes
5. November 20, 2008 Commission Meeting Information
    - Proposed Repeal of 10A NCAC 27G .0700 – Accreditation of Area Programs and Services
    - Proposed Repeal of 10A NCAC 29D .0300 – Regions for Admission – State Facilities
    - Proposed Adoption of 10A NCAC 27E .0300 – North Carolina Interventions Quality Assurance Committee
    - Proposed Amendment of 10A NCAC 27G .0504 – Client Rights
    - Proposed Amendment of 10A NCAC 26F .0103 & .0104 – Scheduling of Controlled Substance

Call to Order

John R. Corne, Commission Chairman, called the meeting to order at 9:41am and asked for a moment of reflection on the Commission course of action during the meeting. Chairman Corne also issued the ethics reminder and asked Commission members to contact staff after the meeting for training and scheduling information, if needed. He also introduced Jennifer Brobst, an attorney specializing in mental health from Durham, NC, as the newest member of the Commission.

Approval of Minutes

Upon motion, second, and unanimous vote, the Commission approved the minutes of the November 20, 2008 Commission Meeting, with the addition of noting Martha Martinat as being present.

Chairman's Report

Chairman Corne stated that there were no committee meetings last month due to inclement weather. He indicated that he had a meeting with Susan Pollitt and Vicki Smith of Disability Rights North Carolina, regarding their role in the process of abuse and neglect on death reporting and to further clarify the Commission's role regarding their report on this issue. He also announced the resignations of J. Michael Hennike and Stanley Oathout.

Director's Report

Leza Wainwright, Director, NC Division of Mental Health, Developmental Disabilities and Substance Abuse Services (NC DMH/DD/SAS), stated that the biggest news in the Division is money and that she is very grateful that the Governor and North Carolina Department of Health and Human Services (NC DHHS) leadership have tried to spare mental health, developmental disabilities, and substance abuse services. She indicated that although the NC DMH/DD/SAS has sustained cuts, they have not been proportionate to its share of the department's budget. Currently, the Division has only taken slightly over $30 million in cuts. These are one time reductions that affect the current year's budget ending in June 2009. An outline of the budget reductions within the Division is provided below:

- A reduction in central office administration of almost $400,000;
- A reduction in the local management entities' administrative funding, system management funding by almost $5 million;
- A reduction in community services non-cross area service programs by $10.5 million and the cross area service programs by $1.2 million;
- A reduction of approximately $400,000 from flexible funding that was available in the facilities;
- The elimination of the diversion contracts that the state hospitals were using with community hospitals; and
- An overall reduction in the facilities at approximately $6 million.

Ms. Wainwright stated that she did not know if this was the end of the budget cuts; however, some LMEs are facing challenges as a result. She also indicated that in terms of proposals for next year's budget, the 7% proposed is almost $59 million for the Division, resulting in their proposal to close Wright and Whitaker schools. She added that because of the budget reductions the Division was forced to make decisions resulting in examining services that were expensive and served a small number of people. Other reductions include the proposal to reduce 25 admission beds at both Cherry and Broughton Hospitals; these are the two facilities that are slated

to be replaced. She concluded her report by advising the Commission that these are only proposals and that she is unaware of what is going to be in Governor Perdue's budget.

Following the Director's Report, Ms. Wainwright received the following questions and comments from the Commission:

- Don Trobaugh, Commission member, stated that when Ms. Wainwright gave her report in November she stated that they were asked to give back $24.2 million and now they are asking for $58 million.
  - Ms. Wainwright responded that she had stated the $24 million was the first round of one time cuts for this year and the Division has now gone through two more rounds of cuts for this year and are on the third round of one time cuts, just to help balance this year's budget. Ms. Wainwright continued by stating that the $58.7 million is at the seven percent (7%) level to reduce the budget on a recurring basis going forward starting July 1, 2009.

- Mr. Trobaugh asked what would happen if 25 beds were removed from Cherry Hospital and there is a need for 35 clients.
  - Ms. Wainwright stated that they were trying to grow the community resources. Ms. Wainwright went on to explain that in 2008, forty-six percent (46%) of the people that were served in the state hospitals stayed seven days or less. The state hospital should be reserved for people who need longer length of stay and need a higher level of care. The individuals who can be treated in seven days or less might be more appropriately treated in a community hospital. This is why the Division is grateful that the General Assembly gave the $20 million on an annual basis so that we can purchase care in community hospitals. Ms. Wainwright further stated that the Division has signed a contract with Duke Hospital to purchase 113 additional beds in community hospitals.

- John Owen, Commission member stated that he read in the newspaper that both Central and Dix Hospitals were facing a threat of decertification and asked Ms. Wainwright if she could elaborate. He also asked Ms. Wainwright to give a picture of how much it cost when a hospital is decertified.
  - Ms. Wainwright responded that there is not a Central and Dix, it is all one hospital. She also stated that Friday is the deadline for the potential decertification from the Medicaid and Medicare program. Last year Broughton was decertified; it is now recertified and receiving Medicaid and Medicare funding. Cherry was decertified in August and will reapply for certification in April 2009. Central Regional has not been decertified, but is under threat and the deadline is this Friday. The surveyors are on site now to follow-up on the plan of correction that Central Regional developed to address the latest incidents that were identified by the surveyors. Ms. Wainwright stated that costs resulting from decertification are unique to the individual hospital and that Cherry hospital is costing $800,000 a month, Broughton hospital cost about $1million and if Central is decertified it would could about $1.2 million a month.

- Mr. Owen asked if Ms. Wainwright could comment on the nursing shortage in the hospitals and the use of traveler nurses who are more expensive.
  - Ms. Wainwright responded that this was another challenge and that nurses are more difficult to recruit. She acknowledged that they worry about the traveler nurses because they do not have that commitment to the facility but added that the General Assembly gave the Division money so that they could pay a sign-on bonus for lead nurses.

- Chairman Corne asked if Ms. Wainwright could give them the number of site beds in the state that were not being occupied.
  - Ms. Wainwright stated that between 2001 and 2007 they lost operational capacity of 409 beds, the most current data from September 2007 has about 200 beds under the certificate of need not staffed and not operational.

- Mr. Owen stated that he heard the state and the Division are looking at changing the commitment law and asked Ms. Wainwright to provide further information.
  - Ms. Wainwright stated that they are looking at making a one change to the inpatient statute and proposing a potential change to the outpatient commitment process. At this time the inpatient commitment statute requires that the physician who is determining that the person meets the criteria for inpatient commitment assess all five senses, which has meant that they could not do examinations by telemedicine. They are now proposing to make a change so that these examinations can be done through telepsychiatry. Also, they have proposed to the Legislative Oversight Committee a pilot project around the outpatient commitment statute for those individuals who come out of the state hospitals under an outpatient commitment to go to the local management entities (LMEs). The LMEs have care coordination responsibility to ensure that the commitment order was followed and that the duration of the commitment be for at least for 180 days rather than the current 90 days.

- Mazie Fleetwood, Commission member, stated that having worked in the south central region, she is aware of the value of Wright and Whitaker Schools to families and their children over the years. Ms. Fleetwood asked if the future cost to the state resulting from their closure was examined, because a number of very high risk and high cost children in that environment are being served and if they are not served while they are young, as they grow older they are going to continue to cost the state more money in later years.
  - Ms. Wainwright continued by stating Ms. Fleetwood's point was well taken, but it is not unique to that population.

- Laurie Coker, Commission member, asked if it was Ms. Wainwright's opinion that the contracts have "*enough teeth"* in them they way that they are currently.
  - Ms. Wainwright further stated that the Division cannot execute a contract that exceeds their statutory authority.

Ms. Wainwright reviewed the Joint Legislative Oversight Committee (LOC) or MH/DD/SAS recommendations, which are listed as follows:

- Return of utilization review for Medicaid services to LMEs approved for conducting this process.
- A LME decision to contract with another LME for Utilization Review functions is permissible and does not constitute a merger or a consolidation.
- The Secretary is prohibited from taking any action that would force or otherwise result in the merger or consolidation of LMEs prior to June 1, 2010.
- The Department is directed to create an incurred, but not reported, category of funds to be carried over so LMEs could pay May and June bills out of current year money rather than having to use the next year's money. This would only be for one time and permits DMH/DD/SAS to require providers to bill the LME for state funded services within 60 days.

- Increase the cigarette tax to the national average and direct those monies toward mh/dd/sas.
- In line with the Chairman's report to the LOC, they are recommending directing the Department to create and maintain a database of all deaths that occur in all facilities governed by Chapter 122C. This would mean not just our state facility, but any facility that is licensed under our licensure categories. This also includes a recommendation to direct the Division to train staff in the state operated facilities regarding death reporting.
- There is a recommendation to extend the residency requirement before someone could qualify for state/county special assistance funding from 90 days to 180 days.
- There is a recommendation that money be appropriated to create a step down unit for the BART program at Murdock.
- The Division should develop a standardized screening tool that could determine the level of need for all individuals with developmental disabilities, including those who would go into a private Intermediate Care Facility For The Mentally Retarded (ICF/MR). There is concern that the private ICF/MR community is not connected to the rest of the public system.
- Continued funding for a housing initiative.
- That the Division receive funding for a Work Force Development Specialist.
- That the Division receive funding for the two new tiers of the CAP-MR/DD waiver.
- There is a recommendation to appropriate new money for the CAP-MR/DD waiver.
- There is a recommendation to use $2 million more of the substance abuse service dollars to expand across area service program initiatives. The Division has concerns about this and the committee was notified that at this time if $2 million of existing money is taken to do this, it would mean taking it away from consumers who are currently receiving services.
- Additional money to implement the Money Follows the Person Grant and have the Institute of Medicine conduct a study of services for returning veterans.
- Pursuit of a waiver for individuals with Traumatic Brain Injury (TBI) and pursuit of Medicaid waivers for all LMEs.

In explaining the process, Ms. Wainwright stated that this is the Joint LOC package that they voted on as a committee on Tuesday, February 17th to approve. It will be translated into several bills that will work their way through the session of the NC General Assembly and be subject to change or modification.

- Chairman Corne asked if the freeze affects hiring workers to replace temporary nurses in the psychiatric hospitals who are there through the vacancies.
  - Ms. Wainwright responded that it does and further stated that there is an expedited process for direct care workers.

- Greg Olley, Commission member, asked if Ms. Wainwright could clarify the Commission's relationship to the information that she just covered on the LOC report.
  - Ms. Wainwright stated that she would make sure the Commission received copies of the report (copies were distributed at the meeting) and stated that the Commission has sent letters to the LOC Chairs regarding their position on certain recommendations in the past.

Rules Committee Update

Anna Scheyett, Chairperson, NC Commission for MH/DD/SAS Rules Committee, was absent; therefore, no Rules Committee Update was given.

10A NCAC 27G .0700 – Proposed Repeal of Accreditation of Area Programs and Services

Jim Jarrard, Section Chief, Resource/Regulatory Management, NC DMH/DD/SAS, presented the proposed repeal of 10A NCAC 27G .0700 – Accreditation of Area Programs and Services. These rules no longer apply to the mh/dd/sa service system. Most LMEs have divested themselves of service provision, and are managers of local mh/dd/sa service system issues. Also, the use of the term "accreditation" in this context is confusing, since accreditation in current mh/dd/sa reform is a status conferred on a LME or a mh/dd/sa service provider by a national accreditation agency, whereas the term used in these rules primarily applied to assuring compliance with rules and regulations.

This is a Secretary rule and is being presented to the Commission for information and comment. Therefore, no action is required by the Commission.

10A NCAC 29D .0300 – Proposed Repeal of Catchment Areas

Steven Hairston, Section Chief, Operations Support, NC DMH/DD/SAS, presented the proposed repeal of 10A NCAC 29D .0300 – Catchment Areas. Prior to the passage of the reform legislation there was a process to designate catchment area; these rules outlined that process. After the passage of the reform, authority was taken away from the Commission and given to the Secretary of Health and Human Services and called for the development of a catchment area plan. Therefore, these rules no longer apply and need to be repealed. The proposed repeal is presented to the full Commission for final review.

Upon motion, second, and majority vote, the Commission approved the proposed repeal of 10A NCAC 29D .0300 – Catchment Areas. There was one abstention - Dr. Ranota Hall.

10A NCAC 28F. 0101 – Proposed Amendment of Regions for Divisional Institutional Admissions

Dr. James Osberg, Director – State Operated Services, NC DMH/DD/SAS, presented the proposed amendment of 10A NCAC 28F .0101 – Regions for Divisional Institutional Admissions. The intent of this rule is to have a region/catchment area for each state facility that does not split Local Management Entities (LMEs) across facility regions. The three region model also distributes the population demographics in an equitable way for each facility and minimizes geographical/logistical issues for individuals who need to access the services of state operated facilities. This is a Commission rule and presented to the Commission for final approval.

Dr. Osberg received the following questions from the Commission:

- Mr. Owen commented that it sounded as if there would be no overflow capacity to move a patient and asked about the wait time for these facilities.
  - Dr. Osberg responded that the wait time actually varies from facility to facility and from patient to patient. Each hospital is triaging their referral so that they should be taking the most acute patient who is in the least safe environment. The wait time varies per individual based on their clinical situation and where they are located when they are referred.

Upon motion, second and unanimous vote, the Commission approved the proposed amendment of 10A NCAC 28F .0101 – Regions for Division Institutional Admission.

10A NCAC 27E .0300 – Proposed Adoption of North Carolina Interventions Quality Assurance Committee

Steven Hairston, Section Chief, Operations Support, NC DMH/DD/SAS, presented the proposed adoption of 10A NCAC 27E .0300 – North Carolina Interventions (NCI) Quality Assurance Committee. These rules set forth regulations concerning the NCI Quality Assurance Committee, including their purpose, duties, and composition. The Commission has rulemaking authority and the proposed are rules presented to the full Commission for approval of publication.

The state of North Carolina has had a crisis intervention program since 1974. There have been some modifications over time and in 1984 the Division put in place a Quality Assurance Committee to oversee the entire program. In 1988 the Division initiated a policy for the Quality Assurance Committee and in 2001 the curriculum was updated and adopted as we know it now, which is the North Carolina Interventions Program. This committee has been around for about 20 years. The purpose of these rules is to set forth regulations for the NCI Quality Assurance Program. The purpose of the Quality Assurance Committee is to establish policies that monitor the safety and effectiveness of the NCI training program overall.

Mr. Hairston received several questions and comments from the Commission regarding the rule:

- Jennifer Brobst, Commission member asked how the committee will know when someone needs to be decertified. Ms. Brobst stated that there should be something in rule 10A NCAC 27E .0303, among the duties that says when they should look at a matter such as a problem with an instructor.
  - Mr. Hairston responded that the committee is notified through the instructor trainers that a situation has occurred that escalated to the level of possible decertification.

- Mr. Owen asked how complaints were referred to this committee. Mr. Owen stated that at least one member of the committee should be designated as a consumer, specifically so that the voice of somebody who might be subject to the interventions could be heard.
  - Mr. Hairston stated that complaints can actually come from many different sources.

- Dr. Greg Olley, Commission member suggested that the acronym for NCI be broken down in the title. Mr. Olley further stated that there are national programs that provide training and North Carolina has never embraced any of them and asked if anyone ever looked at what the most effective program would be. He also inquired if it would be more cost effective to have our own or to buy one for somebody else.
  - Mr. Hairston responded that he believes they use the North Carolina program because it is the best program for the state. Ms. Wainwright responded that they had recently made the decision that they are going to switch to one of the nationally developed and recognized protocols in our state hospitals.

- A Commission member asked if there could be some clarification on the scope of the rule because it states that the purpose of this committee is to establish policies and monitor safety, but when they reviewed the rule, they do not see where they get to establish any policies, just review and recommend. The member stated that she was not sure where the authority lies in determining what kind of restraints are going to be used, especially if we have curriculum almost nine years old.
  - Mr. Hairston agreed that they needed to add that the committee establishes policies. Mr. Hairston further stated that the policies they establish relate more to the operation of the program and not to changes to the NCI curriculum. Mr. Hairston continued by stating

changes to NCI curriculum are managed through a curriculum review committee administered through the central office of the Division. The NCI Quality Assurance Program would establish policies around the instructor trainers.

Upon motion, second and unanimous vote, the Commission approved the proposed adoption of 10A NCAC 27E .0300 for publication with the following changes: add that the committee establishes policies.

10A NCAC 26F .0103 & .0104 – Proposed Amendment of Scheduling of Controlled Substance

Amanda J. Reeder, Rulemaking Coordinator, NC DMH/DD/SAS, presented the proposed amendment of 10A NCAC 26F .0103 & .0104 – Scheduling of Controlled Substance. The Commission has authority to schedule substances, including express authority to amend the schedules to conform to federal law. Amending the rules will maintain consistency with federal scheduling.

The Commission has seen the proposed changes at the August Commission meeting, and approved the amended scheduling. The changes approved at the August meeting have now been incorporated into the rules before the Commission today and are presented for final update.

Upon motion, second and unanimous vote, the Commission approved the amendment of rule 10A NCAC 26F .0103 & .0104 – Scheduling of Controlled Substance.

10A NCAC 27G .0504 –Proposed Amendment of Clients Rights

Amanda Reeder presented a brief history of the rule and stated that at the behest of the Commission there was a decision to amend the client rights rules. This amendment was intended to ensure the rights of consumers both through LME and provider client rights committees. This amendment was approved by the Commission in November of last year, however; when the rule went before the Rules Review Commission (RRC) at the January meeting, they objected to this rule. The RRC stated that the MH/DD/SAS Commission has very clear authority to tell LMEs that they have to set-up client rights committees; however, the Commission does not have the same authority to tell the providers that they must set-up client rights committees.

Upon motion, second and unanimous vote, the Commission approved the withdrawal of rule 10A NCAC 27G .0504 – Client Rights from review by the RRC.

Selection of Vice-Chairman

Chairman Corne stated that he decided to postpone the election for vice-chair of the Commission until the next meeting.

Rule-Making Activities – 2009 Calendar Year

Chairman Corne stated that he had a meeting with Disability Rights of NC and they suggested that the Commission revisit the restraint rules, and that this be placed on a future agenda. Mr. Hairston asked if by restraint rules, they were talking about the NCI program. A representative from Disability Rights of NC stated that some of this might have to be addressed in statute and that the NCI rules are a little out of date. Mr. Hairston clarified that she was talking about making modifications to the NCI curriculum; these changes would not necessarily be done in rule or statute. He also added that the curriculum can be modified quicker than a rule or statute.

Due to the absence of Dr. Anna Scheyett it was decided to address other rule-making activities at a later date.

Confidentiality of Death Reports

Chairman Corne stated that he wanted to get a consensus on death reporting and how much of the information which is patient specific should be made available to the public. Chairman Corne directed the Commission members to the handout on the statute for confidentiality.

Mr. Trobaugh asked why we cannot just release the name, age and address to the public and Chairman Corne responded that our statute is broader than the federal HIPPA guidelines. Chairman Corne stated that the federal statute lets you provide information so long as it doesn't contain identifying information A Commission member stated that looking more broadly at where we are trying to move society forward, it would seem that there being complete information about circumstances, without names attached, would be to our advantage. Chairman Corne stated that everyone needs to know that there has been a death in a facility and you need to know what the investigation said. Chairman Corne stated what he was asking the Commission to think about if they want to take a position on the proposed changes; if not they could follow what is being introduced to the legislature.

Public Comment

Louise Fisher stated that she was very disturbed regarding information she heard from the LOC meetings and other individuals regarding a blanket statement for mental health hospitals saying that individuals who stay at state psychiatric hospital for seven days or less do not belong in the hospital. Ms. Fisher stated that she questioned the Secretary regarding the lack of follow-up for patients being discharged. Ms. Fisher further stated that the Raleigh News &Observer published an article stating that the US Justice Department in North Carolina had been investigating the early release of patients.

There being no further business the meeting adjourned at 1:27pm.